

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN THE INTEREST OF: M.W., JR.	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
	:	
APPEAL OF: M.W., SR.	:	No. 142 MDA 2013

Appeal from the Decree entered December 3, 2012,  
in the Court of Common Pleas of Lycoming County,  
Orphans' Court at No.: 2012-6340

BEFORE: PANELLA, ALLEN, and COLVILLE,\* JJ.

MEMORANDUM BY ALLEN, J.:

**FILED MAY 29, 2013**

M.W., Sr. ("Father") appeals from the decree dated November 30, 2012 and entered on December 3, 2012, terminating his parental rights to his son, M.W., Jr., born in November of 1999 ("Child"), pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), and (b).<sup>1</sup> We affirm.

The factual history of this case is undisputed. Father has been continuously incarcerated since just before Child's birth. Mother and Father were never married. Father has had good behavior throughout his incarceration, and is in a facility that provides the lowest security offered by the Federal Bureau of Prisons. Father anticipates that he will be released from prison in mid-2016, when he would commence a nine to twelve month

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<sup>1</sup> The parental rights of N.M. ("Mother") were voluntarily terminated by decree dated November 8, 2012, and entered November 14, 2012. Mother's consent to adoption was filed on the same date.

\*Retired Senior Judge assigned to the Superior Court.

drug rehabilitation program, followed by release to a half-way house for approximately six months. Father anticipates his release will occur just prior to Child's seventeenth birthday.

Child is an intellectually disabled, non-verbal autistic child. Child was raised largely by his maternal grandmother, until her death in 2011. Lycoming County Children and Youth Services Agency ("CYS") assumed emergency custody of Child on March 21, 2012, when Mother failed to pick Child up from his school bus stop and could not be found. On March 27, 2012, Child was adjudicated dependent. Child currently resides with M.S., who is an adoptive resource. He has lived with her since April 2, 2012. In October of 2012, after the termination petition was filed, Father offered R.F., the mother of Father's older child, as a potential resource for Child. R.F. lives in the Philadelphia area and has never met Child, but expressed her willingness to care for Child.

On September 21, 2012, CYS filed its petition for the involuntary termination of the parental rights of both Mother and Father. On November 8 and 9, 2012, the trial court held a hearing on that petition. At the hearing, the following individuals provided testimony: Brittany Anderson, Child's autistic support teacher; M.S., Child's caretaker and an adoptive resource; Stephanie Fink, Child's foster care case manager; Jennifer Ishman, a CYS caseworker; Bruce Anderson, a licensed psychologist; Mother; Father; and R.F., the mother of Father's older child and a potential adoptive resource.

Father participated by telephone. Mother also participated by telephone for a portion of the November 9, 2012 hearing, for the purpose of confirming her consent to the voluntary termination of her parental rights, and averring that she believed that the relinquishment of her parental rights was in Child's best interest. N.T., 11/9/12, at 25-30.

On December 3, 2012, the trial court entered its decree, along with an opinion and order, terminating Father's parental rights pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), and (b). On January 2, 2013, Father simultaneously filed his notice of appeal and concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(a)(2)(i) and (b).

Father raises one issue for our review:

Whether a proposed termination of a parent's rights satisfies the "needs and welfare" analysis required by 23 Pa.C.S. § 2511(b) when: the child will be a lifelong dependent due to disability, the parent's continued relationship offers potentially lifelong benefits to the child, the child is receiving good care from the prospective adoptive parent ("the caretaker"), the caretaker will continue to provide the same care and love whether the termination is granted or denied, the child can neither understand nor be emotionally affected by the legal status of his relationship to his caretaker, and termination provides the child no tangible or psychological benefit[?]

Father's Brief at 7.

We review appeals from the involuntary termination of parental rights according to the following standard:

[A]ppellate courts must apply an abuse of discretion standard when considering a trial court's determination of a petition for termination of parental rights. As in dependency cases, our standard of review requires an appellate court to accept the

findings of fact and credibility determinations of the trial court if they are supported by the record. ***In re: R.J.T.***, 608 Pa. 9, 9 A.3d 1179, 1190 (Pa. 2010). If the factual findings are supported, appellate courts review to determine if the trial court made an error of law or abused its discretion. ***Id.***; [***In re R.I.S.***, [\_\_\_ Pa. \_\_\_, \_\_\_, 36 A.3d 567, 572 (2011) (plurality opinion)]. As has been often stated, an abuse of discretion does not result merely because the reviewing court might have reached a different conclusion. ***Id.***; ***see also Samuel Bassett v. Kia Motors America, Inc.***, [\_\_\_ Pa. \_\_\_], 34 A.3d 1, 51 (Pa. 2011); ***Christianson v. Ely***, [575 Pa. 647, 654-655], 838 A.2d 630, 634 (Pa. 2003). Instead, a decision may be reversed for an abuse of discretion only upon demonstration of manifest unreasonableness, partiality, prejudice, bias, or ill-will. ***Id.***

As we discussed in ***R.J.T.***, there are clear reasons for applying an abuse of discretion standard of review in these cases. We observed that, unlike trial courts, appellate courts are not equipped to make the fact-specific determinations on a cold record, where the trial judges are observing the parties during the relevant hearing and often presiding over numerous other hearings regarding the child and parents. ***R.J.T.***, 608 Pa. 9, 9 A.3d at 1190. Therefore, even where the facts could support an opposite result, as is often the case in dependency and termination cases, an appellate court must resist the urge to second guess the trial court and impose its own credibility determinations and judgment; instead we must defer to the trial judges so long as the factual findings are supported by the record and the court's legal conclusions are not the result of an error of law or an abuse of discretion. ***In re Adoption of Atencio***, 539 Pa. 161, 650 A.2d 1064, 1066 (Pa. 1994).

***In re Adoption of S.P.***, 47 A.3d 817, 826-27 (Pa. 2012).

Termination of parental rights is governed by section 2511 of the Adoption Act, which requires a bifurcated analysis:

Our case law has made clear that under Section 2511, the court must engage in a bifurcated process prior to terminating parental rights. Initially, the focus is on the conduct of the parent. The party seeking termination must prove by clear and convincing evidence that the parent's conduct satisfies the statutory grounds for termination delineated in Section 2511(a).

Only if the court determines that the parent's conduct warrants termination of his or her parental rights does the court engage in the second part of the analysis pursuant to Section 2511(b): determination of the needs and welfare of the child under the standard of best interests of the child. One major aspect of the needs and welfare analysis concerns the nature and status of the emotional bond between parent and child, with close attention paid to the effect on the child of permanently severing any such bond.

***In re L.M.***, 923 A.2d 505, 511 (Pa. Super. 2007) (citations omitted). The burden is upon the petitioner to prove by clear and convincing evidence that the asserted statutory grounds for seeking the termination of parental rights are valid. ***In re R.N.J.***, 985 A.2d 273, 276 (Pa. Super. 2009).

Here, Father does not contest the trial court's finding as to 23 Pa.C.S.A. § 2511(a)(1) or (2). Father's Brief at 7. Thus we need only address Father's issue on appeal, which concerns 23 Pa.C.S.A. § 2511(b). ***See generally In re Z.P.***, 994 A.2d 1108, 1121 (Pa. Super. 2010); ***In re B.L.W.***, 843 A.2d 380, 384 (Pa. Super. 2004) (*en banc*).

Section 2511(b) of the Adoption Act provides in pertinent part:

**(b) Other considerations.**—The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent.

23 Pa.C.S.A. § 2511(b).

In his brief, Father presents a laudably concise and novel argument. Father argues that, while many cases apply Section 2511(b) to an evaluation

of the parent-child bond, the statute itself is broader than that bond, in that it directs analysis of the “developmental, physical and emotional needs and welfare of the child.” Father’s Brief at 11 (quoting 23 Pa.C.S.A. § 2511(b)). Father argues that given Child’s unique situation, he is incapable of forming a bond with any parent, biological or adoptive, and argues that in this particular situation, Child cannot benefit from the termination of parental rights. Father’s Brief at 12.

The trial court found, and Father does not contest, that no bond exists between Father and Child. Father has been incarcerated since the time of Child’s birth, and has seen Child only once, when Child was an infant. Father expresses doubt that Child can appreciate or benefit from the status change of his caretaker becoming his legal parent, but provides no citation to evidence directly supporting this assertion. Father’s Brief at 12. Father, in sum, argues that the requirements of Section 2511(b) are not met by the facts of this case.

While cogently argued, Father’s argument asks this Court to substitute our judgment for that of the trial court. We are bound, however, to defer to the trial court, so long as its factual findings are supported by the record, and the court’s legal conclusions are not the result of an error of law or an abuse of discretion. ***See In re Adoption of S.P.***, 47 A.3d at 827. This is so, even where facts could arguably support an opposite result. We must

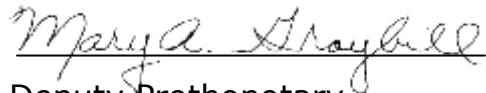
resist the urge to second-guess the trial court and impose our own judgment. **See id.**

Father does not contest the trial court's factual findings, and our review of the record reveals that those findings are supported by the record. Moreover, after review of the record, the trial court's opinion, and Father's appellate brief, we discern no abuse of discretion or error of law in the trial court's application of Sections 2511(a) and (b). **See id.** at 826-27.

Accordingly, for the reasons stated above, we affirm the trial court's decree terminating Father's parental rights to Child pursuant to 23 Pa.C.S.A. § 2511(a)(1), (2), and (b).

Decree affirmed.

Judgment Entered.

  
Deputy Prothonotary

Date: 5/29/2013